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No. 308

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

LOUISIANA GAS SERVICE COMPANY, ET AL.,
Petitioners,

v.

FEDERAL POWER COMMISSION, WILLMUT GAS AND OIL COMPANY, AND UNITED GAS PIPE LINE COMPANY, *Respondents.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

Petitioners, Louisiana Gas Service Company (hereafter "Louisiana Gas"), and a group known and referred to in all proceedings below as the "Industrial Intervenors", consisting of Hammond-Baton Rouge Brick Company and other parties,[1] pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered on April 6, 1966, in three cases argued jointly and decided in one opinion, namely *Louisiana Public Service Commission* v. *Federal Power Commission,* No. 21705; *Louisiana Gas Service Commission* v. *Federal Power Commission,* No. 21706; *Hammond-Baton Rouge Brick Com-*

[1] Louisiana Cypress Lumber Company, St. Joe Brick Works, Inc., American Creosote Works, Inc., Slidell Brick & Tile, Inc., Your Food Processing & Warehouse Co., Martin Bros. Container & Timber Products Corp., and Oliver Treated Products, Inc.

pany, et al v. *Federal Power Commission,* No. 21707. That judgment denied three petitions to set aside an order of the Federal Power Commission (hereafter "The Commission"), and, in effect, affirmed said order, in which the Commission, in a 3-2 decision ruled that it, and not the Louisiana Public Service Commission (hereafter "The Louisiana Commission"), has jurisdiction to regulate sales for resale of natural gas by United Gas Pipe Line Company within a certain area of the State of Louisiana. Petitioners are advised that the Louisiana Commission will file a petition for certiorari in these cases. This order of the Commission had reversed in part the Initial Decision of the Commission's Presiding Examiner, which would have sustained Louisiana Commission jurisdiction of some of the sales in question.

Opinions Below

The Initial Decision of the Presiding Examiner (R. 665) is reported at 30 F.P.C. Reports 580. The Opinion and Order of the Federal Power Commission (R. 829) is reported at 30 F.P.C. 560. The Opinion and Order of the Federal Power Commission denying rehearing (R. 951) is reported at 31 F.P.C. 1152. The Opinion of the Court of Appeals (Brewster, D.J.) is reported at 359 F. 2d 525, and appears in the Appendix at page 14. The Judgment of the Court of Appeals appears in the Appendix at page 20.[2]

Jurisdiction

The Opinion of the Court of Appeals was filed on April 6, 1966, and the Judgment of the Court of Appeals was filed on May 2, 1966. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

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[2] All opinions below are also printed separately in an appendix to the petition for certiorari filed on behalf of the Louisiana Commission.

Questions Presented

1. Does the Federal Power Commission have jurisdiction to regulate a sale of natural gas at wholesale made in the same state where the gas was produced, where the transportation is wholly in the same state, and the gas is delivered and consumed in the same state?

2. Assuming the answer to the first question to be negative, is the nature of the sale of the gas changed simply by reason of its being transported in a pipeline carrying other gas which is destined for transportation and consumption in other states?

Statutes Involved

The statutes primarily involved are the provisions of the Natural Gas Act relating to the jurisdiction of the Commission to regulate sales in interstate commerce, and court review of final orders of the Commission in that connection, more particularly 15 U.S.C. §§ 717, 717a, and 717r. These statutes appear in the Appendix hereto at pages 21-24.

Statement

United Gas Pipe Line Company (hereafter "United") transports and sells gas, primarily at wholesale, in several southern states, including Louisiana. (R. 537) Many of United's sales at wholesale are regulated by the Louisiana Commission. (R. 67-68, 122-124) These latter sales, which include all of the wholesales in the Metropolitan New Orleans area, are not involved directly in this proceeding, but may be affected by the outcome. The sales by United involved in this proceeding are those wholesales by United within the so-called Florida Parishes area of Louisiana, which roughly is an area lying east of Baton Rouge, north

of Lake Pontchartrain and bounded otherwise by the Mississippi State Line. (R. 538)

United serves the Florida Parishes through the means of two main transmission lines, known as the Napoleonville-Kosciusko line and the Lirette-Mobile line. All of the gas in the Lirette-Mobile line is produced within the boundaries of the State of Louisiana. A relatively small amount of the gas in the Napoleonville-Kosciusko line is produced in the area offshore from the mainland of Louisiana, and the remainder and much more substantial portion is produced within the boundaries of Louisiana. (R. 88-89, 513) Most of the gas in both lines is transported by United northward and eastward for sale and consumption in other states. (R. 94-96, 533-535)

Neither the Commission nor the Court of Appeals reached the question of the status of the gas produced from offshore, and its effect, if any, on the jurisdictional questions involved. Both the Commission and the Court of Appeals assumed that their respective decisions would be the same even if all of the gas involved in the sales in question were produced within the boundaries of the State of Louisiana.

The Commission historically regulated United's wholesales of gas in the Florida Parishes, because up until approximately 1951, the gas sold there emanated from sources outside the State of Louisiana. Since that time, all of the gas sold there has been produced within Louisiana's borders, except the relatively small portion of "offshore" gas mentioned above. (R. 61-64, 133-134)

The Commission's Presiding Examiner, after reviewing the authorities at length, concluded that sales from the Lirette-Mobile line were subject to the jurisdiction of the Louisiana Commission, and that sales from the Napoleonville-Kosciusko line were subject to Commission jurisdiction under the Natural Gas Act. (R. 665-704)

The Commission, in a 3-2 decision, reversed the Presiding Examiner in part, and held that all sales by United in the Florida Parishes were subject to Commission jurisdiction. (R. 825-841) Applications for rehearing were filed by the petitioners here and by the Louisiana Public Service Commission, and the Commission granted a rehearing for further consideration. (R. 928) Subsequently, the Commission issued an additional Opinion and Order, adhering to its original opinion and ruling, again by a 3-2 vote. (R. 950-957)

Separate petitions for review were filed with the United States Court of Appeals for the Fifth Circuit by (1) the Louisiana Commission, (2) Louisiana Gas, and (3) the Industrial Intervenors (Hammond-Baton Rouge Brick Company, et al). The Court of Appeals affirmed the Commission's order, relying exclusively on the decisions of this court in *California* v. *LoVaca Gathering Co.*, 379 U.S. 366, 85 S. Ct. 486, 13 L.Ed. 2nd 357 (1965) and *Federal Power Commission* v. *Amerada Petroleum Corporation*, 379 U.S. 687, 85 S. Ct. 632, 13 L.Ed. 2nd 605 (1965).

Reasons for Granting the Writ

In this case, the Court of Appeals has manifestly misconstrued, misapplied and misconceived the decisions of this Court in *California* v. *LoVaca Gathering Co.*, 379 U.S. 366, 85 S. Ct. 486, 13 L.Ed. 2d 357 (1964) and *Federal Power Commission* v. *Amerada Petroleum Corp.*, 379 U.S. 387, 85 S. Ct. 632, 13 L.ed 2d 605 (1965), and ignored other relevant decisions and pertinent legislative history, in an important field of regulatory jurisdiction. The effect of the decision of the Court of Appeals, if allowed to stand, would be far-reaching, as was noted in the Dissenting Statement to the Opinion and Order of the Commission:

> "The majority's error is of grave importance, for it expands Commission jurisdiction to embrace a whole new, broad class of sales heretofore considered subject to State and not federal regulation. Thus, it will have a national impact with consequences far transcending the importance of this particular case, effecting a fundamental change in the distribution of authority between the federal and State governments in the regulation of the natural gas industry." (R. 842)

Without any comparative analysis of the factual situations involved, respectively, in the *LoVaca* and *Amerada* cases, and the case before it, and without considering that in the former cases, the alternative to federal regulation was an absence of any regulation at all, the Court of Appeals applied the decisions of this Court in those cases almost mechanically and indeed stated, after referring to those cases:

> "The facts in each of those cases more strongly supported the argument for state jurisdiction over the gas produced, gathered, transported and sold in the same state than do the facts of this proceeding." (359 F. 2d 525, 528)

Aside from the fact, clearly discernible from *LoVaca* and *Amerada*, that those decisions did not involve asserted state jurisdiction, the decision of the Court of Appeals in the instant case represents the first time that the Commission, the litigating parties, or any Court has suggested that the Commission had a stronger case for its jurisdiction in the instant proceeding than in the *LoVaca* and *Amerada* cases. Indeed, it is interesting to contrast the above quoted statement of the Court of Appeals in the instant case with the following statement in the dissenting opinion of Judge

Rives in the *LoVaca* case, the reasoning of which was substantially sustained by the decision of the Court in that case:

> "The Commission's jurisdiction over the proposed sales of natural gas by LoVaca and by Houston to El Paso *is much more clear* than its jurisdiction sustained in United Gas Pipe Line Company, Opinion No. 401 of the Commission issued August 26, 1963." (Emphasis added)
>
> *LoVaca Gathering Co.* v. *Federal Power Commission*, 323 F. 2d 190, 197 (5th Cir. 1963).[3]

Moreover, this Court, in the *LoVaca* and *Amerada* cases was rejecting attempts by producers and similar interests to avoid the effect of this Court's decision in *Interstate Natural Gas Company* v. *Federal Power Commission*, 331 U.S. 682, 67 S. Ct. 1482, 91 L. ed 1742 (1947) and *Phillips Petroleum Corporation* v. *Wisconsin*, 347 U. S. 672, 74 S. Ct. 794, 98 L. ed 1035 (1954), and thereby be free of *any* regulation, state or federal. The Court of Appeals, in the instant case, virtually without discussion of the point, has employed the *LoVaca* and *Amerada* decisions to frustrate the legitimate efforts of a state regulatory body and distributors and consumers within the state where the gas was produced, to sustain state jurisdiction of a type of sale historically regulated by the states. In doing so, the Court of Appeals ignored a relevant portion of the decision of this Court in the *LoVaca* case, and misconstrued language of this Court in the same case in such a way as to extend beyond recognition the controlling principle enunciated therein.

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[3] The reference is to the decision of the Federal Power Commission in this case, which was called to the attention of the Court of Appeals while it had under submission the *LoVaca* case.

A. Under LoVaca, Crossing of a State Line Is Essential to Federal Jurisdiction.

After reviewing the applicable jurisprudence this Court, in the *LoVaca* case, summed up that jurisprudence as follows:

> "The result of our decisions is to make the sale of gas, *which crosses a state line* at any stage of its movement from wellhead to ultimate consumption, 'in interstate commerce' within the meaning of the Act." (Emphasis added) *California* v. *LoVaca Gathering Co., supra* at page 369, U.S.

In the earlier decisions where this Court had upheld Commission jurisdiction of producer-type sales, it was felt necessary to reject contentions that the sales in question were not in interstate commerce, within the meaning of the Natural Gas Act, because the gas had not yet crossed a state line, even though destined beyond question ultimately to do so. Notably, in *Interstate Natural Gas Company* v. *Federal Power Commission, supra,* this Court said:

> "There is nothing in that language to suggest that Congress intended that sales consummated *before the gas crosses a state line* should not be regarded as being 'in' such commerce." (Emphasis added) (Page 688 U.S.)

The decision of the Court of Appeals would dispense with the crossing of a state line (either already occurred or bound to occur) as an essential element of a sale of gas for resale in interstate commerce under the Natural Gas Act. This is something that this Court has never had before it for decision or even had suggested to it, and is at

variance with the apparent recognition by this Court in the *LoVaca* case that the crossing of a state line is an essential element.

B. The Meaning of "Entire Transaction" in LoVaca Opinion.

In the *LoVaca* case, this Court said:

> "The fact that a substantial part of the gas will be resold, in our view, invokes federal jurisdiction at the outset *over the entire transaction.* Were suppliers of gas and pipeline companies free to allocate by contract gas from a particular source to a particular use, havoc would be raised with the federal regulatory scheme, as it was construed and applied in *Phillips Petroleum Co.* v. *Wisconsin,* 347 U.S. 672." (Emphasis added) (Pages 369-370 U.S.)

The Court of Appeals in the instant case necessarily construed the phrase "over the entire transaction" to include all sales from the pipeline. Nevertheless, it is clear from the context of the phrase as used by this Court in *LoVaca* that the reference was merely to the entire producer sale, and that this Court was not addressing itself to the situation involved in sales of gas from the pipeline. Moreover, the idea that Commission jurisdiction at the producer level precludes entirely state regulation of any sale of gas from the pipeline is contradicted by the reasoning and decision of this Court in *Panhandle Eastern Pipe Line Co.* v. *Public Service Commission,* 332 U.S. 507, 68 S. Ct. 190, 92 L. ed 128, (1947) [decided very shortly after the decision of this Court in *Interstate Natural Gas Company* v. *Federal Power Commission, supra*], where this Court said:

> "The Natural Gas Act therefore was not merely ineffective to exclude the sales now in question from

state control. Rather both its policy and its terms confirm that control."

* * * * *

"Congress' action moreover was an unequivocal recognition of the vital interests of the states and their people, consumers and industry alike, in the regulation of rates and service." (P. 521, U.S.)

* * * * *

"Appellant also envisages conflicting regulations by the commissions of the various states its main pipe line serves, particularly in relation to curtailment of service when weather conditions or others require it, and fears conflict also between the state commissions and the Federal Power Commission. It assigns these possibilities in support of its view that national uniform regulation alone is appropriate to its operations. There is no evidence thus far of substantial conflict in either respect and we do not see that the probability of serious conflict is so strong as to outweigh the vital local interests to which we have referred requiring regulation by the states. Moreover, if such conflict should develop, the matter of interrupting service is one largely related, as appellees say, to transportation and thus within the jurisdiction of the Federal Power Commission to control, *in accommodation of any conflicting interests among various states.*" (Emphasis added) (P. 523, U.S.)

* * * * *

As was noted in the Dissenting Statement to the Opinion of the Commission in this case (R. 855-856):

"The majority further argues that United's sales in Louisiana may reduce the reserve and otherwise affect the quantities of gas available for out-of-state markets. Again, this basis for decision finds no support in the record."

* * * * * *

"But even if these reserves had been dedicated, the appropriate and conventional action would be for the Commission to issue an order requiring United to obtain an abandonment certificate before using the reserves for nonjurisdictional sales. This procedure, which is regularly used by the Commission, reserves control in the Commission over dedicated reserves and *completely protects the interstate market.*" (Emphasis added)

C. Legislative History of the Natural Gas Act.

In applying mechanically to the instant case the decisions of this Court in *LoVaca* and *Amerada*, the Court of Appeals ignored relevant legislative history of the Natural Gas Act, which this Court had no occasion to consider in those cases and, indeed, has not heretofore had any occasion to consider. For example, an earlier version of the legislation which became the Natural Gas Act (H.R. 4008 [75th Congress, First Session (1937)]) would have provided for federal regulation of any sale of natural gas for resale where the gas had been previously transported in interstate commerce, regardless of whether the sale itself was in interstate commerce. During hearings on H.R. 4008, objections were raised to the failure of the bill to confine jurisdiction to gas sold in interstate commerce (Hearings before the Committee on Interstate and Foreign Commerce, House of Representatives—75th Con-

gress—First Session—March 24-25, 1937). H.R. 4008 did not survive as such in the legislative processes, but the bill (H.R. 6586) that ultimately became in 1938 the Natural Gas Act (15 U.S.C. §§ 717-717w) recognizes that Commission jurisdiction is confined, as far as sales are concerned, to sales "in interstate commerce of natural gas for resale."

Moreover, the debates in Congress reflect in several instances clear recognition that the Natural Gas Act was not intended to disturb state regulation of gas produced within the consuming state (Congressional Record, 75th Congress —First Session, pages 6721, 6722, 6726, 9313, 9315).

What is involved here is simply that the Commission (actually only 3 of the 5 member commission) feels that it is desirable that all wholesales of gas from a pipe line containing other gas that will cross a state line be regulated by it, to the exclusion of state regulation. Congress, however, rejected such an argument in 1938, and the remedy of those urging such exclusive federal regulation lies with Congress and not with the Courts. The decision of the Court of Appeals in the instant case is manifestly erroneous on this important issue of federal *versus* state regulation, and, if allowed to stand, would, in effect, permit a jurisdiction, carefully limited by Congress, to be extended by the adjudicative process of administrative agencies, rather than by a legislative action in Congress. Such a situation calls for review by this Court.

Conclusion

Wherefore, petitioners pray that a writ of certiorari issue from this Honorable Court to review the judgment of the United States Court of Appeals for the Fifth Circuit in the related cases, Louisiana Public Service Commission v. Federal Power Commission, Louisiana Gas Service Company v. Federal Power Commission, and Hammond-Baton Rouge Brick Company, et al v. Federal Power Commission.

June, 1966

Respectfully submitted,

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APPENDIX

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 21705

LOUISIANA PUBLIC SERVICE COMMISSION, *Petitioner,*

versus

FEDERAL POWER COMMISSION, *Respondent.*

No. 21706

LOUISIANA GAS SERVICE COMPANY, *Petitioner,*

versus

FEDERAL POWER COMMISSION, *Respondent.*

No. 21707

HAMMOND-BATON ROUGE BRICK COMPANY, ET AL, *Petitioners,*

versus

FEDERAL POWER COMMISSION, *Respondent.*

Petitions for Review of Orders of the Federal Power Commission.

(April 6, 1966.)

Before JONES and WISDOM, Circuit Judges, and BREWSTER, District Judge.

BREWSTER, District Judge: The controlling question presented by these petitions to review and set aside an order [1] and the supporting opinions [2] of the Federal Power Commission is whether the sales of natural gas at wholesale by a pipeline company from its integrated, interstate pipeline system are sales at wholesale in interstate commerce

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[1] *United Gas Pipe Line Company,* 30 FPC 560.

[2] Opinions 401 and 401 A, C P 62-161.

within the meaning of the Natural Gas Act,[3] where such sales are made within the state where the gas is produced, for ultimate public consumption therein, but the gas so sold

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[3] The Natural Gas Act may sometimes be referred to herein as the "Act". The provisions of the Act pertinent to this case are 15 U.S.C.A. 717 (b) and (c), 717 a (7) o.

Sec. 717 (b): "The provisions of this chapter shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, but shall not apply to any other transportation or sale of natural gas to or the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas."

Sec. 717 (c): "The provisions of this chapter shall not apply to any person engaged in or legally authorized to engage in the transportation in interstate commerce or the sale in interstate commerce for resale, of natural gas received by such person from another person within or at the boundary of a State if all the natural gas so received is ultimately consumed within such State, or to any facilities used by such person for such transportation or sale, provided that the rates and service of such person and facilities be subject to regulation by a State commission. The matters exempted from the provisions of this chapter by this subsection are declared to be matters primarily of local concern and subject to regulation by the several States. A certification from such State Commission to the Federal Power Commission that such State commission has regulatory jurisdiction over rates and service of such person and facilities and is exercising such jurisdiction shall constitute conclusive evidence of such regulatory power or jurisdiction. . . ."

Sec. 717 a (7): "'Interstate commerce' means commerce between any point in a State and any point outside thereof, or between points within the same State but through any place outside thereof, but only insofar as such commerce takes place within the United States."

Sec. 717 o: "The Commission shall have power to perform any and all acts, and to prescribe, issue, make, amend, and rescind such orders, rules, and regulations as it may find necessary or appropriate to carry out the provisions of this chapter. Among other things, such rules and regulations may define accounting, technical, and trade terms used in this chapter; and may prescribe the form or forms of all statements, declarations, applications, and reports to be filed with the Commission, the information which they shall contain, and the time within which they shall be filed. Unless a different date is specified therein, rules and regulations of the Commission shall be effective thirty days after publication in the manner which the Commission shall prescribe. Orders of the Commission shall be effective on the date and in the manner which the Commission shall prescribe. For the purposes of its rules and regulations, the Commission

comes from an admixture of gas, some of which is destined for transportation to and consumption in other states.

Our conclusion is that such sales do come within the terms of the Act, and that they are subject to the rate and certificate regulatory jurisdiction of the Federal Power Commission, rather than that of state utility bodies. We therefore uphold the order of the Commission declaring that it, and not the Louisiana Public Service Commission, had such jurisdiction over certain sales at wholesale by United Gas Pipe Company [4] from its interstate pipelines of natural gas produced from fields in southern Louisiana and in the adjoining offshore continental shelf beyond the regular state boundaries,[5] for ultimate consumption in the Florida Parishes [6] of that State.

The proceeding before the Commission originated with a petition by United for a declaratory order, brought under the provisions of the Act and of the Commission's Rules

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may classify persons and matters within its jurisdiction and prescribe different requirements for different classes of persons or matters. All rules and regulations of the Commission shall be filed with its secretary and shall be kept open in convenient form for public inspection and examination during reasonable business hours. . . ."

[4] The following party designations will appear in the opinion:

Federal Power Commission—"Commission".
Louisiana Public Service Commission—"Louisiana".
United Gas Pipe Line Company—"United".
Louisiana Gas Service Company—"Gas Company".
Hammond Baton Rouge Brick Company—"Brick Company".

[5] While the "onshore" or "offshore" source of the gas in question does not have the importance it had before the Commission, in view of our holding on the question stated at the outset of the opinion, some mention will be made at times of the gas sources in describing the facilities involved. The gas produced from fields within the regular borders of Louisiana will be described as "onshore", while that from fields beyond such borders on that area of the continental shelf submerged in the Gulf of Mexico that would be embraced within the boundaries of Louisiana extended seaward will be called "offshore".

[6] The parishes in the area of Louisiana north of Lake Pontchartrain and east of the Mississippi River are known in that State as the "Florida Parishes".

of Practice and Procedure,[7] with respect to the existence or absence of jurisdiction in the Commission to regulate its sales of gas at wholesale for ultimate consumption in the Florida Parishes. United took no position one way or the other on the question presented. Louisiana, the Gas Company, the Brick Company and others intervened, advocating state rather than federal regulatory jurisdiction. Other interested parties intervened and urged that the Commission had jurisdiction. In due course, the Commission let loose its order and opinions now under attack here, with two of the Commissioners dissenting.

It is conceded that the facts are undisputed, and that only one possible inference may be drawn from them.

United is a natural gas company within the contemplation of the Act, engaged in the business of gathering, transporting and selling natural gas at wholesale for ultimate public consumption. It transports and sells gas both in interstate and intrastate commerce, but gas for both types of sales travels in a commingled stream in the pipelines. The main pipelines involved in this case are part of a fully integrated pipeline system by means of which United transports and sells gas from the states of Texas, Louisiana and Mississippi to industrial customers, pipelines and local distributors in those states and in Alabama and Florida. The question under consideration has no relation to United's purely intrastate pipeline facilities which are completely separate from its interstate system and over which the Commission has not asserted jurisdiction.

The particular portion of United's integrated, interstate

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[7] Regulation

F.P.C., Rules of Practice and Procedure: (18 CFR 1.7(c)):

"Section 1.7 (c). For declaratory orders. Petitions for the issuance, in the discretion of the Commission, of a declaratory order to terminate a controversy or remove uncertainty, shall state clearly and concisely the controversy or uncertainty which is the subject of the petition, shall cite the statutory provision or other authority involved, shall include a complete statement of the facts and grounds prompting the petition, together with a full disclosure of petitioner's interest, and shall conform to the requirements of ## 1.15 and 1.16."

system directly involved here consists of two main pipelines crossing the Florida Parishes on their way from Louisiana to other states, together with the network of interconnecting lines lying between them. A 30 inch line runs from the vicinity of Napoleonville, Louisiana, through the northwest area of these Parishes to Kosciusko, Mississippi. A 14–16 inch line across the southeast portion of the Parishes connects some fields in the area of Lirette, Louisiana with Mobile, Alabama. There are several connections between the two main lines in the Florida Parishes area, making it possible for gas from the two lines to become intermixed. All of the gas gathered from the producers for the Lirette-Mobile line comes from onshore fields, while that for the Napoleonville-Kosciusko line comes from both onshore and offshore fields. When it is so gathered for transportation, some of it is destined for sale at wholesale in Louisiana for ultimate consumption within that State and the balance for transportation to other states for such sale and consumption there. The gas to be sold intrastate is intermixed during transportation with that to be sold interstate, and both types of sales are taken from the commingled stream. In most instances, towns in the Florida Parishes are served from the connecting lines or from the network of smaller lines tying into them, rather than from the main lines. Some of those towns receive gas which comes to the Florida Parishes through only one of the main lines, while others receive gas which is a mixture of that from each of such lines. At the time of the hearing before the Commission, the gas sold by United for consumption in the Florida Parishes represented only a small percentage of that transported in these main lines.

These conditions brought about a conflict resulting from the assertion of jurisdiction by both the Commission and by Louisiana over the same intrastate sales in some portions of the Florida Parishes; and that conflict precipitated the action by United seeking a declaratory order settling the question as to which regulatory body actually had jurisdiction.

The question here involved has been definitely settled against the petitioners by the holding of the Supreme Court

in *California* v. *Lo-Vaca Gathering Co.*, 379 U. S. 366, 85 S. Ct. 486, 13 L. ed. 2d 357 (1965), and *Federal Power Commission* v. *Amerada Petroleum Corp.*, 379 U. S. 687, 85 S. Ct. 632, 13 L. ed. 2d 605 (1965), decided since the present action reached this Court. The facts in each of those cases more strongly supported the argument for state jurisdiction over the gas produced, gathered, transported and sold in the same state than do the facts of this proceeding. In each instance, however, the Supreme Court held that the mixing of intrastate gas with a substantial portion of interstate gas for pipeline transportation in one commingled stream gave the Commission jurisdiction "at the outset over the entire transaction". Those decisions require that we uphold the order of the Commission under consideration in this case without passing on the correctness of the Commission's holding on the effect of commingling onshore and offshore gas.

Our disposition of the question above discussed makes moot the issues as to the effect of commingling onshore and offshore gas, and as to whether the Commission should be ordered to re-open the proceedings before it for the reception of further evidence as to recent developments connected with the offshore gas.

The petitions to set aside the order of the Commission are DENIED.

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

OCTOBER TERM, 1964

No. 21705

LOUISIANA PUBLIC SERVICE COMMISSION, *Petitioner,*

versus

FEDERAL POWER COMMISSION, *Respondent.*

No. 21706

LOUISIANA GAS SERVICE COMPANY, *Petitioner,*

versus

FEDERAL POWER COMMISSION, *Respondent.*

No. 21707

HAMMOND-BATON ROUGE BRICK COMPANY, ET AL, *Petitioners,*

versus

FEDERAL POWER COMMISSION, *Respondent.*

Petitions for Review of Orders of the Federal Power Commission.

Before JONES and WISDOM, Circuit Judges, and BREWSTER, District Judge.

JUDGMENT

This cause came to be heard on the petitions of Louisiana Public Service Commission, Louisiana Gas Service Company and Hammond-Baton Rouge Brick Company, Et Al., for review of orders of the Federal Power Commission issued on August 26, 1963 and May 11, 1964, in Docket No. CP62-161; and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered, adjudged and decreed by this Court that the petitions to set aside the order of the Commission in this cause be, and the same are hereby, denied.

April 6, 1966.

Issued as Mandate: May 2, 1966.

15 U.S.C. Section 717a

§ 717a. Definitions

When used in this chapter, unless the context otherwise requires—

(1) "Person" includes an individual or a corporation.

(2) "Corporation" includes any corporation, joint-stock company, partnership, association, business trust, organized group of persons, whether incorporated or not, receiver or receivers, trustee or trustees of any of the foregoing, but shall not include municipalities as hereinafter defined.

(3) "Municipality" means a city, county, or other political subdivision or agency of a State.

(4) "State" means a State admitted to the Union, the District of Columbia, and any organized Territory of the United States.

(5) "Natural gas" means either natural gas unmixed, or any mixture of natural and artificial gas.

(6) "Natural-gas company" means a person engaged in the transportation of natural gas in interstate commerce, or the sale in interstate commerce of such gas for resale.

(7) "Interstate commerce" means commerce between any point in a State and any point outside thereof, or between points within the same State but through any place outside thereof, but only insofar as such commerce takes place within the United States.

(8) "State commission" means the regulatory body of the State or municipality having jurisdiction to regulate rates and charges for the sale of natural gas to consumers within the State or municipality.

(9) "Commission" and "Commissioner" means the Federal Power Commission, and a member thereof, respectively. June 21, 1938, c. 556, § 2, 52 Stat. 821.

15 U.S.C. Section 717

§ 717. Necessity for regulation of natural gas companies

(a) As disclosed in reports of the Federal Trade Commission made pursuant to S.Res. 83 (Seventieth Congress, first session) and other reports made pursuant to the authority of Congress, it is declared that the business of transporting and selling natural gas for ultimate distribution to the public is affected with a public interest, and that Federal regulation in matters relating to the transportation of natural gas and the sale thereof in interstate and foreign commerce is necessary in the public interest.

(b) The provisions of this chapter shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas.

(c) The provisions of this chapter shall not apply to any person engaged in or legally authorized to engage in the transportation in interstate commerce or the sale in interstate commerce for resale, of natural gas received by such person from another person within or at the boundary of a State if all the natural gas so received is ultimately consumed within such State, or to any facilities used by such person for such transportation or sale, provided that the rates and service of such person and facilities be subject to regulation by a State commission. The matters exempted from the provisions of this chapter by this subsection are declared to be matters primarily of local concern and subject to regulation by the several States. A certification from such State commission to the Federal Power Commission that such State commission has regulatory jurisdiction over rates and service of such person and facilities and is exercising such jurisdiction shall constitute conclusive evidence of such regulatory power or jurisdiction. June 21, 1938, c. 556, § 1, 52 Stat. 821; Mar. 27, 1954, c. 115, 68 Stat. 36.

15 U.S.C. Section 717r

§ 717r. Rehearings; court review of orders

(a) Any person, State, municipality, or State commission aggrieved by an order issued by the Commission in a proceeding under this chapter to which such person, State, municipality, or State commission is a party may apply for a rehearing within thirty days after the issuance of such order. The application for rehearing shall set forth specifically the ground or grounds upon which such application is based. Upon such application the Commission shall have power to grant or deny rehearing or to abrogate or modify its order without further hearing. Unless the Commission acts upon the application for rehearing within thirty days after it is filed, such application may be deemed to have been denied. No proceeding to review any order of the Commission shall be brought by any person unless such person shall have made application to the Commission for a rehearing thereon. Until the record in a proceeding shall have been filed in a court of appeals, as provided in subsection (b) of this section, the Commission may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it under the provisions of this chapter.

(b) Any party to a proceeding under this chapter aggrieved by an order issued by the Commission in such proceeding may obtain a review of such order in the court of appeals of the United States for any circuit wherein the natural-gas company to which the order relates is located or has its principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the order of the Commission upon the application for rehearing, a written petition praying that the order of the Commission be modified or set aside in whole or in part. A copy of such petition shall forthwith be transmitted by the clerk of the court to any member of the Commission and thereupon the Commission shall file with the court the record upon which

the order complained of was entered, as provided in section 2112 of Title 28. Upon the filing of such petition such court shall have jurisdiction, which upon the filing of the record with it shall be exclusive, to affirm, modify, or set aside such order in whole or in part. No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission in the application for rehearing unless there is reasonable ground for failure so to do. The finding of the Commission as to the facts, if supported by substantial evidence, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceedings before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings as to the facts by reason of the additional evidence so taken, and it shall file with the court such modified or new findings, which if supported by substantial evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court, affirming, modifying, or setting aside, in whole or in part, any such order of the Commission, shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in sections 346 and 347 of Title 28.

(c) The filing of an application for rehearing under subsection (a) of this section shall not, unless specifically ordered by the Commission, operate as a stay of the Commission's order. The commencement of proceedings under subsection (b) of this section shall not, unless specifically ordered by the court, operate as a stay of the Commission's order. June 21, 1938, c. 556, § 19, 52 Stat. 831; June 25, 1948, c. 646, § 32(a), 62 Stat. 991; May 24, 1949, c. 139, § 127, 63 Stat. 107; Aug. 28, 1958, Pub.L. 85-791, § 19, 72 Stat. 947.

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